Supreme Court, U.S.
FILED

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In The
Supreme Court of the United States

STATE OF OHIO,
Petitioner,

v.

BOBBY D. JONES,
Respondent.

Petition For A Writ Of Certiorari
To The Ninth District Court of Appeals
For Summit County, Ohio

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

WHEN REVIEWING A TRIAL COURT'S DECISION TO OVERRULE A MOTION TO SUPPRESS, SHOULD AN APPELLATE COURT VIEW THE EVIDENCE IN A LIGHT MOST FAVORABLE TO THE PROSECUTION?

LIST OF PARTIES

Petitioner is the State of Ohio.

Respondent is Bobby D. Jones.

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NO.

In The
Supreme Court of the United States

STATE OF OHIO,
Petitioner,

v.

BOBBY D. JONES,
Respondent.

Petition For A Writ Of Certiorari
To The Ninth District Court of Appeals
For Summit County, Ohio

Petitioner State Of Ohio Respectfully Prays That This Court Grant A Writ Of Certiorari.

Petitioner, State of Ohio, prays that a Writ of Certiorari issue to review the judgment entry of the Supreme Court of Ohio entered in the above-captioned proceedings on July 2, 2003.

OPINIONS BELOW

The decision of the Supreme Court of Ohio is reported as *State v. Jones* (July 2, 2003), Case Announcements, 2003-Ohio-3396. (Appendix A;

PUBLISHER'S NOTE:

Page(s) 2 missing in original.

STATUTORY & CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States
Amendment IV
Reproduced at page E

Ohio Revised Code 2923.24
[Possessing Criminal Tools]
Reproduced at page F

Ohio Revised Code 2925.03
[Trafficking in Marijuana]
Reproduced at page G

Ohio Revised Code 2925.04
[Illegal Cultivation of Marijuana]
Reproduced at page H

Ohio Revised Code 2925.11
[Possession of Marijuana]
Reproduced at page I

Section 1257(a), Title 28, U.S. Code
Reproduced at page J

STATEMENT OF THE CASE

The Respondent, Bobby D. Jones, was indicted for one (1) count of Illegal Cultivation of Marijuana in violation of R.C. 2925.04(A), a felony of the third degree, one (1) count of Possessing Criminal Tools in violation of R.C. 2923.24, a felony of the fifth degree, one (1) count of Possession of Marijuana in violation of R.C. 2925.11(A), a felony of the third degree, and one (1) count of Trafficking in Marijuana in violation of R.C. 2925.03(A)(2), a felony of the third degree. The indictment also contained two (2) other co-defendants, David Jones and Terry Jones, who have not appealed their convictions and are not a party to this appeal.

The Respondent filed a motion to suppress the evidence that was seized by the police claiming that the police improperly searched the Respondent's business without a warrant in violation of Respondent's Fourth Amendment rights. On February 7, 2002, the Petitioner filed a response to the Respondent's motion to suppress

asserting that the police reasonably entered the Respondent's business because they believed a burglary was in progress. On December 26, 2001, the trial court held a hearing on the Respondent's motion to suppress and subsequently issued an opinion overruling Respondent's motion to suppress. However, the trial court's opinion only included a scant four-sentence summary of the events leading up to the search.

On April 26, 2002, a jury trial was held and the jury convicted the Respondent of all of the counts in the indictment. On May 28, 2002, the trial court sentenced the Respondent to two (2) years in prison on each of the drug related convictions and also ordered that the Respondent serve six (6) months for Possession of Criminal Tools. These sentences are to be served concurrently.

The Respondent appealed his convictions to the Ohio Ninth District Court of Appeals asserting that the trial court committed error when it overruled his motion

to suppress. On February 19, 2003, the Ninth District Court of Appeals in a two to one decision reversed Respondent's convictions finding that the trial court committed error when overruling Respondent's motion to suppress. The Appellate Court found that the summary of the facts by the trial court did not support a reasonable belief of an existing emergency. On March 17, 2003 the Ohio Ninth District Court of Appeals denied the Petitioner's motion for reconsideration.

The Petitioner filed a memorandum in support of jurisdiction in the Ohio Supreme Court and on July 2, 2003 the Ohio Supreme Court dismissed the appeal without asserting jurisdiction of this case.

STATEMENT OF FACTS

On Sunday, November 4, 2001, at 10:37 p.m., Officer Scott Lietke and his partner, Officer Steven Swartz, were patrolling on Kenmore Boulevard when they passed 1030 Kenmore Boulevard, a vacant storefront. (T.pp. 12, 48). Officer Lietke saw a light on at this

address and observed a silhouetted figure dart across the inside of the business. (T.p. 12). The two officers turned the cruiser around and parked near this building because Officer Lietke believed that somebody was breaking into this building. (T.p. 13). Officer Swartz looked in the storefront window and told his partner, "I see him. I see him." (T.p. 15). Officer Swartz became alarmed when the subject then moved out of the way and tried to conceal himself behind a partition in this business. (T.p. 62).

Officer Lietke drew his weapon out of his holster while Officer Swartz knocked on the door. Both officers were yelling, "Open the door. Open the door." Finally, after knocking on the window for a few minutes, the Respondent came to the door but would not open it. (T.p. 62). The Respondent opened the door far enough to slide himself through and then immediately locked the door and slammed it behind him in an odd manner. (T.p. 15). The Respondent told the officers that it was not his business but that he was doing construction work in

the building. (T.p. 16). The officers immediately noticed the building was completely vacant with no evidence of construction. (T.p. 63). When Officer Lietke asked the Respondent if he was authorized to be there, the Respondent changed his story and stated "Well it is my business." (T.p. 16).

After the police officers asked for some identification, the Respondent had trouble finding any identification and the police noticed that he had an identification card for a female. (T.p. 17). Officer Lietke noticed that the Respondent was older and was moving very slowly. (T.p. 17). He was "pretty sure" that there was another person still in the store because the person he had observed earlier had moved quickly through the building. Further, when the Respondent came out of hiding, he had come from the opposite direction from where the figure had been running. (T.pp. 17, 52). When the two officers indicated they wanted to check the business for other people, the Respondent stated that the

police could not go in there. (T.p. 19). While talking to the police, the Respondent was very nervous, his respiration was very heavy, and he was very rude to the officers. (T.p. 20). Officer Swartz believed that there was somebody inside the building, like a child, and that there was some type of crime that had been committed, such as a break in. (T.p. 64).

The police placed the Respondent in handcuffs, took the keys from the Respondent and entered the building to look for this other person. (T.p. 21). When Officer Swartz entered the building he had his gun drawn and was hesitant and scared because he believed "there's somebody in there." (T.p. 65). The police found some non-usable scrap marijuana lying in the middle of the floor. (T.p. 21). Officer Swartz believed that it was possible that somebody had broken into this business and used the marijuana. (T.p. 22). As Officer Swartz went through the building, he found a wall with a blue raft against it and then a hidden room. (T.p. 66). In this

hidden room the police found one hundred ninety-one (191) individual marijuana plants in rows of thirty (30) with an irrigation system and heat lamps. (T.p. 24). The police arrested the Respondent and subsequently found Ten Thousand Dollars ($10,000.00) in the Respondent's briefcase.

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD RESOLVE A CONFLICT BETWEEN THE FEDERAL CIRCUIT COURTS ON WHETHER AN APPELLATE COURT MUST CONSTRUE THE EVIDENCE AT A SUPPRESSION HEARING IN A LIGHT MOST FAVORABLE TO THE PROSECUTION WHEN REVIEWING A TRIAL COURT'S DECISION OVERRULING A MOTION TO SUPPRESS.

The Ohio Ninth District Court of Appeals reversed the trial court's decision overruling Respondent's motion to suppress finding that the trial court's three factual findings did not support a reasonable belief of an existing emergency or burglary at Respondent's business. Accepting the trial court's findings as "true facts" the appellate court gave no weight to fourteen other facts and

police inferences that supported the trial court's determination to overrule the Respondent's motion to suppress. Once a trial court has overruled a motion to suppress, should the factfinder's role as weigher of the evidence be preserved through a legal conclusion that upon judicial review all of the evidence is to be considered in the light most favorable to the prosecutor?

1. A Police Officer's Testimony That Supports A Trial Court's Decision To Overrule A Motion To Suppress Should Be Given Weight Even Where It Is Omitted From The Trial Court's Findings Of Fact.

"[T]he Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid." *Mincey v. Arizona,* 437 U.S. 385, 391 (1978). There are two principal components of a determination of reasonable suspicion. First, a court must identify what are the events leading up to the search. Second, whether these facts, viewed from the standpoint

of an objectively reasonable police officer, amount to reasonable suspicion to believe that an emergency is in progress. *Ornelas v. United States,* 517 U.S. 690, 696 (1996). When applying the law to the historical facts, the *Ornelas* court applied a de novo review finding that this type of review would unify precedent, clarify principles and help guide the police with a defined set of rules. *Id.* at 697. However, this court emphasized that, "a reviewing court should take care both to review *findings* of historical fact only for clear error and to give due weight to inferences drawn from *those facts* by resident judges and local law enforcement officers. *Id.* at 699. (Emphasis added). The rationale behind this deference is that, "A trial judge views the facts of a particular case in light of the distinctive features and events of the community; likewise, a police officer views the facts through the lens of his police experience and expertise. The background facts provide a context for the historical

facts, and when seen together yield inferences that deserve deference." *Id.*

Applying the above rationale, why should deferential review be limited to the trial court's findings of fact? There are a myriad of facts and law enforcement inferences based upon those facts that support a trial court's determination to overrule a motion to suppress and it is impossible for all of this evidence to be set forth in the trial court's factual findings. A police officer's testimony and the inferences drawn from this testimony based upon his training and experience should not lose their value because they are omitted from the trial court's findings of historical fact. The trial court's factual findings should be the beginning and not the end of an appellate court's determination of the historical facts. In order to give value to this testimony, an appellate court should search the record for facts and inferences that support the trial court's determination to overrule the Respondent's motion to suppress.

In this case, Officer Lietke and Officer Swartz were the only two witnesses who testified at the suppression hearing and the trial court never questioned their credibility. The Petitioner set fourth fourteen (14) separate facts and inferences in its brief that supported the trial court's determination that Officer Lietke and Officer Swartz had a reasonable belief that an emergency existed at 1030 Kenmore Boulevard:

1. On Sunday evening at 10:37 p.m., Officer Lietke and Officer Swartz were on a routine patrol when they saw a silhouetted figure dart across the inside of a vacant storefront. (T.p. 12).

2. Upon closer examination, Officer Swartz observed the Respondent in the store and knocked on the plate glass window. (T.p. 62).

3. The Respondent attempted to conceal himself from the police by hiding behind a partition wall. (T.p. 62).

4. The police kept knocking on the window telling the subject to come out. (T.p. 62).

5. After a few minutes of coaxing, the Respondent came out of the building by

opening the door slightly, quickly ran out, and shut the door locking it. (T.pp. 18, 63).

6. Both police officers described Respondent's manner of exiting the building as nervous and odd. (T.pp. 15, 63).

7. After the police asked the Respondent about why he was there, he mentioned that he was working on construction of the building. (T.p. 63).

8. The police immediately noticed the building was vacant with no evidence of recent construction. (T.p. 63).

9. Later, the Respondent changed his story to indicate he owned the building. (T.p. 16).

10. When the police requested identification, the Respondent did not immediately provide any identification. (T.p. 16).

11. The police found that the Respondent had an identification card of a female. (T.p. 16).

12. The police officers noticed that the Respondent was extremely nervous when he was talking to the police and his respirations were very heavy. (T.p. 20).

13. Officer Lietke believed that there was another person in the building besides the Respondent because the Respondent was

older and the silhouetted figure had moved quickly in the building. (T.p. 52).

14. Further when the Respondent exited the building, the Respondent came from the direction the figure "had come from, not went to." (T.p. 52).

More importantly, Officer Swartz drew an inference from these facts based upon Respondent's conduct that there was some type of wrongdoing occurring in the building: "He was real nervous, evasive; and my feeling, actually, we – you know, I felt like somebody was inside, like a kid. I just felt like there was some type of wrongdoing here, like somebody's life could be in danger or a small child was inside, was in harm's way." (T.p. 64).

Officer Lietke also drew an inference from these facts that a legitimate store owner working late at night on a Sunday would welcome a visit from the police and that Respondent's conduct was extremely out of the ordinary. "And a storefront owner on Kenmore Boulevard, when he gets policemen to stop and speak with him, is extremely

happy and wants—I'm going to be starting this business here and this is what's going to happen and it's great that you guys are by, you know. His behavior was extremely out of the ordinary." (T.p. 54).

This Court has recently emphasized that a police officer is entitled to make an assessment of the situation in light of his specialized training and familiarity with the customs of the area's inhabitants. *United States v. Arvizu,* 531 U.S. 266, 271 (2002). Rather than getting preferential treatment, Officer Lietke's and Officer Swartz's assessment of the facts was given a zero value by the Ohio Appellate Court because these inferences and the facts underlying these inferences were omitted from the trial court's findings of historical fact: "The trial court found reasonableness in the belief there was a burglary in progress, due to the three facts listed above. We do not agree that these facts support a reasonable belief of an existing emergency." *State v. Jones,* Summit App. No. 21158, 2003-Ohio-730 at ¶20.

2. By Interpreting The Evidence In A Light Most Favorable To The Prevailing Party, It Will Insure An Accurate Determination Of Historical Facts.

By accepting the trial court's findings of fact as the true facts, a reviewing court determines the suppression issue not upon properly admitted evidence, but upon the length, clarity, and inclusiveness of the lower court's factual findings. The suppression rule was enacted to deter the police from violating a person's Fourth Amendment rights. A determination of the historical facts and the inferences to be drawn from those facts will often decide whether the police violated a person's Fourth Amendment rights. *United States v. Arvizu,* 531 U.S. 266 (2002). There is no deterrent value in this decision because the determination of the historical facts was flawed.

In order to correct this flaw, Petitioner contends that when conducting a review of a trial court's decision to overrule a motion to suppress, all of the evidence

introduced at the suppression hearing is to be considered in the light most favorable to the prevailing party. This court had indicated, "once a defendant has been found guilty of the crime charged, the factfinder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review all of the evidence is to be considered in the light most favorable to the prosecution." *Jackson v. Virginia,* 443 U.S. 307, 319 (1979). Petitioner contends that in order to obtain an accurate statement of historical facts and the inferences that can be drawn from those facts when reviewing a denial of a motion to suppress, an appellate court should give deference to the trial courts findings of fact *and* construe all of the evidence in the light most consistent with these findings.

3. The Federal Circuit Courts Are Divided On Whether They Must Construe The Evidence Most Favorable To The Prevailing Party When Reviewing A Motion To Suppress.

After this court decided *Ornelas*, approximately half of the federal circuit courts have adopted the standard set forth by Petitioner indicating that an appellate court must review the entire record in a suppression hearing and construe the evidence most favorably to the prevailing party. "The denial of a suppression motion will be upheld if there is any reasonable view of the evidence to support it." *United States v. Munoz,* 307 F.3d 344, 351 (5th Cir. 2002). (Citations omitted). Absent an error of law, a court will uphold a refusal to suppress evidence as long as the refusal is supported by some reasonable view of the record. *United States v. Lee,* 317 F.3d 26, 29-30 (1st Cir. 2003). The evidence must be viewed in the light most favorable to the prevailing party. *United States v. Harrell,* 268 F.3d 141, 145 (2nd Cir. 2001). In warrantless searches the Fourth Circuit has applied this standard

stating "we construe the evidence in the light most favorable to the Government, the prevailing party below." *United States v. Seidman*, 156 F.3d. 542, 547 (4th Cir. 1998). When determining reasonable suspicion the Tenth Circuit has stated, "we view the evidence in the light most favorable to the prevailing party, and we accept the district court's findings of fact unless they are clearly erroneous." *United States v. Gandara Salinas Holt,* 327 F.3d 1127, 1129 (10th Cir. 2003). Likewise, the Sixth Circuit has applied this same test, "When the district court has denied the motion to suppress, we review all evidence in a light most favorable to the Government. *United States v. Galloway*, 316 F.3d 624, 628 (6th Cir. 2003).

The Third, Seventh, Eighth, Ninth, Eleventh and District of Columbia District Courts have taken the opposite approach merely reviewing the trial court's findings of fact for clear error when determining the historical facts. *United States v. Robertson,* 305 F.3d 164 (3rd Cir. 2002); *United States v. Felix-Felix*, 275 F.3d 627

(7th Cir. 2001); *United States v. Mallari,* 334 F.3d 765, 766 (8th Cir. 2003); *United States v. Fernandez-Castillo,* 324 F.3d 1114,1117 (9th Cir. 2003); *United States v. Clark,* 337 F.3d 1282, 1285 (11th Cir. 2003); *United States v. Brown,* 334 F.3d 1161,1164 (D.C. Cir. 2003).

When reviewing the evidence most favorably to the prevailing party, none of the circuit courts make reference to any decision from this Court and this Court has never addressed this specific issue. Petitioner contends that this Court should grant a Writ of Certiorari in this case in order to resolve the conflict among the federal circuit courts.

CONCLUSION

In *Ornelas*, this court set forth a de novo standard of review for suppression issues but emphasized that a reviewing court was to review findings of historical fact for clear error and give due weight to inferences drawn from those facts by resident judges and police officers. *Id.* at 700. Petitioner contends that the findings of

historical fact will often decide the suppression issues and that an appellate court should view the evidence most favorably to the prosecutor when reviewing a trial court's decision overruling a motion to suppress. This Court should grant the Petition for A Writ of Certiorari to review whether the police violated the Respondent's Fourth Amendment rights.

Respectfully submitted,

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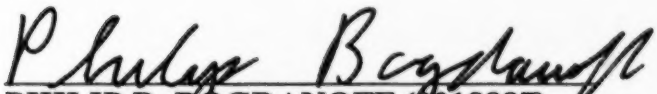

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THE SUPREME COURT OF OHIO

State of Ohio, Appellant,	:	Case No. 03-602
v.	:	ENTRY
Bobby D. Jones, Appellee.	:	

Upon consideration of the jurisdictional memoranda filed in this case, the Court dismisses the appeal as not involving any substantial constitutional question.

COSTS:

Docket Fee, $40.00, paid by Summit county Prosecutors Office.

(Summit County Court of Appeals: No. 21158).

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

STATE OF OHIO	)	IN THE COURT OF
	)ss:	APPEALS, NINTH
COUNTY OF SUMMIT)		JUDICIAL DISTRICT

STATE OF OHIO C.A. No. 21158

Appellee

v.

BOBBY D. JONES

Appellant

Appellee has moved this court to reconsider our opinion, which was journalized on February 19, 2003, and which vacated an order from the trial court denying a motion to suppress evidence and remanded for further proceedings consistent with the opinion. Appellant has not responded to the motion.

In determining whether to grant a motion for reconsideration, a court of appeals must review the motion to see if it calls to the attention of the court an obvious error in its decision or if it raises issues not

considered properly by the court. *Garfield Hts. City School Dist. V. State Bd. Of Edn.* (1992), 85 Ohio App.3d 117. Appellant argues that the decision should be reconsidered because Appellant states that this Court did not review the entire record in determining whether the totality of the circumstances support the trial court's decision, but restricted its de novo review to the trial court's findings of fact.

The court finds that the motion for reconsideration in this case neither calls attention to an obvious error nor raises an issue that we did not consider properly. The court's findings of facts were reviewed for clear error, and were also found to be unsupported by the evidence. An extensive review of the evidence was included in the opinion, as well as omissions in the evidence presented. Whereas this court stated that the trial court's findings of fact were not supported by the evidence, this court also made an independent assessment of the evidence to

determine that a search warrant was required under these facts. The motion is denied.

/s/ Judge William R. Baird
JUDGE WILLIAM R. BAIRD

/s/ Judge Beth Whitmore
JUDGE BETH WHITMORE

A copy of this journal entry is being mailed to the following:

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STATE OF OHIO) IN THE COURT OF
)ss: APPEALS, NINTH
COUNTY OF SUMMIT) JUDICIAL DISTRICT

STATE OF OHIO

Appellee

v.

BOBBY D. JONES

Appellant

C.A. No. 21158

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 01 11 2927 (A)

DECISION AND JOURNAL ENTRY

Dated: February 19, 2003

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

BAIRD, Presiding Judge.

{¶1} Appellant, Bobby D. Jones ("Jones"), appeals a judgment of conviction and sentence on multiple drug charges from the Summit County Court of Common Pleas. We vacate the order denying the suppression of evidence and remand for further proceedings consistent with this opinion.

I.

{¶2} On November 4, 2001, a City of Akron police officer, while on patrol, observed movement within a vacant business building at 1030 Kenmore Boulevard (the "building"). The officer and his partner approached the building to investigate and found no signs of a burglary. However, through a window they observed a man inside who, according to the officers, appeared to be trying to conceal himself. The police officers knocked on the window and asked the man to come out. Eventually the man did so, although only after several minutes of coaxing. When the man went to the door, he opened it,

slid out, and immediately closed and locked the door behind him, and put the keys in his pocket. The officers questioned the man regarding his identity and his purpose for being in the building. While the man was searching his wallet for his identification card, one officer saw an identification card belonging to a woman; the officer reached over and pulled it from the wallet. The man was identified as the appellant, Bobby Jones, and he initially told the officers that he was there to do work for the building owner. Eventually, Jones admitted that the building belonged to him. The officers repeatedly asked for permission to enter and search the building. Each time he was asked, Jones refused to give permission for the officers to enter the building. The officers testified that Jones was breathing hard, was nervous, rude, and adamant that the officers should not enter the building. The officers, explaining to Jones that he was not under arrest, handcuffed Jones, retrieved the keys from his pocket, and entered the building.

{¶3} With weapons drawn, the officers searched the building and found a room containing hydroponic marijuana cultivation. Inside the room were 191 large marijuana plants growing under bright lights, each irrigated individually. There were also pieces of scrap marijuana on the floor of the building. Upon the discovery of the contraband, the officers placed Jones under arrest.

{¶4} The police officers left the building with Jones and called a supervisor to the scene. When the supervisor arrived, the police re-entered the building in order to dismantle and tag the hydroponic equipment and take the plants and equipment into evidence.

{¶5} Jones had reported to the officers that he had walked from his home on Harvey Avenue to the building, something the officers testified they disbelieved, as they had patrolled the area all evening and had not see Jones walking. Through the license plate number, the officers ascertained that Jones was the owner of a car

parked in the street near the building. The officers towed the car; police protocol requires an inventory of articles contained within a vehicle prior to a tow. During the inventory of Jones' vehicle, the officers found a briefcase in the trunk. Underneath the briefcase were money wrappers for bundles of one thousand dollars. Also inside the vehicle were empty trash bags and blocks of material used for seed germination.

{¶6} After the arrest, the officers searched Jones' pockets and found an electric bill for the building, showing Robert L. Goodwin of Harrison Avenue as the responsible party. There was also a bank statement in Jones' pockets, indicating a balance of fifty four thousand dollars. Jones' wallet contained several hundred dollars as well.

{¶7} At the police station, the officers informed Jones of his Miranda rights and interviewed him. Jones admitted growing the marijuana for his own medicinal purposes and stated that there was ten thousand dollars

inside the briefcase. The officers requested that the briefcase be retrieved from the towed vehicle so that the money could be safeguarded. When Jones was finally booked into jail, he gave his residence address as 567 Harvey Avenue.

{¶8} A detective from the Akron police narcotics division assumed control over the investigation of Jones. The detective obtained a search warrant for the briefcase and discovered that it actually contained forty three thousand dollars. The detective testified that an informant had independently told the detective that there was a father-son duo on Harvey Avenue who were selling marijuana from two residences across the street from one another. The informant had said that the father was a white male named Bobby, but the informant did not know the addresses involved. The detective testified that prior to Jones' arrest, he had attempted to ascertain the addresses by observing activity on the street. In light of the cash, and information he had previously received from

the informant, the detective obtained a search warrant for the residence that Jones claimed was his residence: 567 Harvey Avenue.

{¶9} When police executed the search warrant at 567 Harvey Avenue, two males and one female occupied the house. The female was Jones' wife, and one of the two males was his son. A search of the residence turned up scales, 5,000 grams of marijuana, cultivation materials and grow lights, firearms, and marijuana stems. The two males were appropriately charged. One of the males advised the police that Jones did not live at 567 Harvey Avenue, but lived across the street at 566 Harvey Avenue. Likewise a neighbor advised police that they were searching the wrong house, and that Jones lived at 566 Harvey Avenue.

{¶10} Therefore, the police obtained a search warrant for 566 Harvey Avenue. Inside 566 Harvey Avenue, police found 101 live marijuana plants, grow lights, heat lamps, miscellaneous personal papers in

Jones' name, and trash bags full of marijuana stems. Included in the personal papers was evidence that Jones also owned a property at 1935 Second Street. A search warrant was obtained for that address, which was discovered to be vacant. Nevertheless, police investigators reported finding evidence that it had once housed a marijuana crop.

{¶11} From the building and the two Harvey Avenue residences, police seized around 16,000 grams of marijuana. In addition to the criminal indictment, the prosecution sought forfeiture of the three real properties from which the marijuana was recovered, the money in the briefcase, the wallet, and the bank account, as well as the car that was towed at the time of the initial arrest.

{¶12} Prior to trial on his criminal charges, Jones moved to suppress all evidence from the building, as well as the other searches, on the grounds that the initial search

of the building was illegal.[1] During the suppression hearing, the police officers testified that they deemed a warrantless entry to be necessary because they initially thought a burglary was in progress. In addition, because Jones had a woman's identification card in his wallet, and because he was so nervous and adamant, they believed he may have been holding someone, perhaps a woman or a child, against their will inside the building. The testimony revealed that the woman's identification belonged to Jones' wife. Also at the hearing, the narcotics detective conceded that the search warrants for the briefcase, and the Harvey Avenue properties, resulted from information garnered initially at 1030 Kenmore when the building was first searched and Jones was arrested. The detective also stated that the only independent information came from the unnamed informant who knew of the father-son operation

[1] The two males arrested at 567 Harvey Avenue were also parties in the motion to suppress; however, they are not parties to this appeal.

somewhere on Harvey Avenue. The trial court denied the motion to suppress.

{¶13} A jury found Jones guilty of four counts on the indictment. The trial court sentenced Jones to concurrent sentences and fines and ordered forfeiture of any interest in 1030 Kenmore Boulevard, 567 and 566 Harvey Avenue, the $54,000 in the bank account, and the $43,850 in the briefcase. The trial court released Jones on an appeal bond, and ordered all seized contraband and personal property to be held pending the outcome of the appeal. Jones timely filed the appeal, raising two assignments of error.

II.

Assignment of Error No. 1

{¶14} "THE FAILURE OF THE TRIAL COURT TO SUPPRESS THE EVIDENCE GAINED THROUGH THE TWO SEPARATE ENTRIES INTO 1030 KENMORE BOULEVARD IS NOT IN ACCORDANCE WITH LAW IN THAT THE ENTRIES,

SEARCH AND SEIZURE OF PROPERTY VIOLATED APPELLANT'S RIGHTS UNDER THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 14 OF THE OHIO CONSTITUTION."

{¶15} In his first assignment of error, Jones argues that evidence garnered in a search of a building at 1030 Kenmore Boulevard, and any evidence obtained as a result of that search, should have been suppressed at trial, in that the warrantless entry was contrary to law and not subject to an exception for a warrantless search. We agree.

{¶16} An appellate court's review of a ruling on a motion to suppress evidence presents a mixed question of law and fact. *State v. Long* (1998), 127 Ohio App.3d 328, 332. Whether an officer has probable cause or reasonable suspicion to make a warrantless arrest is reviewed by an appellate court de novo. *State v. Bing* (1999), 134 Ohio App.3d 444, 448, citing *Ornelas v.*

United States (1996), 517 U.S. 690, 699, 116 S.Ct. 1657, 134 L.Ed.2d 911. However, "[i]n a hearing on a motion to suppress evidence, the trial court assumes the role of trier of facts and is in the best position to resolve questions of fact and evaluate the credibility of witnesses." *State v. Hopfer* (1996), 112 Ohio App.3d 521, 548. Accordingly, "[a]n appellate court must review the trial court's findings of historical fact only for clear error, giving due weight to inferences drawn from those facts by the trial court. The trial court's legal conclusions, however, are afforded no deference, but are reviewed *de novo*." *State v. Russell* (1998), 127 Ohio App.3d 414, 416, citing *Ornelas*, 517 U.S. at 699.

{¶17} The Fourth Amendment to the United States Constitution guarantees certain protections: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" Section 14, Article I of the Ohio Constitution, contains language nearly identical

to that of the Fourth Amendment, and similarly prohibits unreasonable searches and seizures. See *State v. Kinney* (1998), 83 Ohio St.3d 85, 87. "Section 14, Article I of the Ohio Constitution protects commercial buildings as well as private homes and offices." *State v. Penn* (1991), 61 Ohio St.3d 720, syllabus. The exclusion of evidence obtained in violation of these constitutional guarantees is an essential part of the Fourth Amendment. *State v. Jones* (2000), 88 Ohio St.3d 430, 434; *Mapp v. Ohio* (1961), 367 U.S. 643, 655-656, 81 S.Ct. 1684, 6 L.Ed.2d 1081.

{¶18} Warrantless searches are per se unreasonable. *State v. Myers* (1997), 119 Ohio App.3d 376, 379-80, citing *Katz v. United States* (1967), 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576. There are four exceptions to the warrant requirement which justify a warrantless search of a building: (1) an emergency situation, (2) search incident to an arrest, (3) "hot pursuit" and (4) easily destroyed or removed evidence. *State v. Bowe* (1988), 52 Ohio App.3d 112, 113-114. A showing

that the police officers had reasonable grounds to believe some kind of emergency existed is sufficient to establish an exception for an emergency. *State v. Hyde* (1971), 26 Ohio App.2d 32, 34. A warrantless search must be "strictly circumscribed by the exigencies which justify its initiation." *Terry v. Ohio* (1968), 392 U.S. 1, 25-26, 88 S.Ct. 1868, 20 L.Ed.2d 889. "[T]he pivotal criterion is the reasonableness of the belief of the police as to the existence of the emergency and not the existence of the emergency in fact." *State v. Bell* (Feb. 23, 1978), 9th Dist. Nos. 8496, 8592, at 6-7.

{¶19} In the journal entry denying the motion to suppress, the trial court made the following findings of fact relevant to the initial entry: (1) the officers saw a person in the building; (2) the person came out and locked the door behind him; and, (3) the person was in possession of a female's identification card. Our review of the record indicates that the trial court's factual findings are supported by the testimony presented at the

hearing on the motion to suppress, and thus we find no clear error in the trial court's findings of fact.

{¶20} Therefore, it is left to this Court to determine if those facts are adequate to support a warrantless search. The only exception to a warrantless search asserted in this case is the exception for an emergency. Under this exception, the police officers, in light of all the circumstances, must be reasonable in their belief that some kind of emergency existed. The trial court found reasonableness in the belief there was a burglary in progress, due to the three facts listed above. We do not agree that these facts support a reasonable belief of an existing emergency.

{¶21} The officers testified they had been patrolling the area all evening and did not see Jones walking. Further, there was no testimony that while doing the patrols in the area, they observed suspicious activity around the building or the car Jones had parked

nearby, until they saw Jones inside the building. There were no signs of forced entry upon the building.

{¶22} When Jones exited the building, according to the testimony, he was in possession of a "quite a few" keys, one of which was a key to the building. Jones used one key to quickly lock the door behind him when he exited; there was no testimony that he demonstrated a need to investigate which key of the bunch was required, ruling out the possibility that he had just obtained the keys once he gained access to the building and that he was unfamiliar with them.

{¶23} There is scant testimony regarding the information provided on the female's identification card that was in Jones' possession. The testimony was that the card belonged to Jones' wife. It is unknown through the record whether she used Jones' last name on the identification card, or if Jones explained to the officers that the woman on the identification card was his wife, or if so, whether they believed or disbelieved him. That

Jones was in possession of a woman's identification card is not sufficient to make reasonable the subjective belief of an emergency.

{¶24} We consider that Section 14, Article I of the Ohio Constitution protects commercial buildings from unreasonable searches and seizures, in the same manner as it protects private residences. We believe that if the facts found by the trial court were applied to Jones inside his private residence instead of a commercial building, then it would be clear that a warrantless search was not justified. As it was, Jones was inside his own building and was not obligated to grant the police entry, and the police were not entitled to enter without a warrant because their stated belief in an emergency was unreasonable. Therefore, the motion to suppress the evidence, gleaned both directly and subsequently from the entry into 1030 Kenmore Boulevard, should have been granted.

{¶25} Jones's first assignment of error is sustained. In accordance, we vacate the order denying Jones' motion to suppress. This Court orders that all evidence obtained as a result of the search of 1030 Kenmore Boulevard on November 4, 2001, is suppressed.

Assignment of Error No. 2

{¶26} "THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION TO DISMISS THE FORFEITURE OF REALTY ON THE GROUNDS THAT APPELLEE FAILED TO SPECIFY WITHIN THE INDICTMENT THE NATURE OF THE RIGHT, TITLE, OR INTEREST OF THE ALLEGED OFFENDER IN THE PROPERTY TO BE FORFEITED PURSUANT TO ORC SEC. 2925.42(B)(1)(A)" (SIC.)

{¶27} In the second assignment of error, Jones argues that the indictment for the criminal charge failed to specify certain statutory requirements necessary to the forfeiture of property, and therefore it was error for the trial court to deny the motion to dismiss the forfeiture.

{¶28} Forfeiture of property is dependent upon a conviction. Our ruling in the first assignment of error may result in a vacation of the conviction. Therefore, we decline to address this second assignment of error.

III.

{¶29} The judgment denying the motion to suppress in the Summit County Court of Common Pleas is vacated, and the cause remanded for proceedings consistent with this opinion.

Judgment vacated,
and cause remanded.

WILLIAM R. BAIRD
FOR THE COURT

WHITMORE, J.
CONCURS

CARR, J.
DISSENTS, SAYING:

{¶30} I respectfully dissent.

{¶31} "Warrantless entry into a home is considered presumptively unreasonable. *Payton v. New*

York (1980), 445 U.S. 573, 586. Even when probable cause exists, exigent circumstances must also exist in order to support an entry without a warrant. Id. at 586.

***

{¶32} "However, an 'emergency situation' has been recognized as an exigent circumstance justifying a warrantless search. *Mincey v. Arizona* (1978), 437 U.S. 385, 392-393. The need to protect or preserve life or avoid serious injury is justification for what would otherwise be illegal, absent an exigency or emergency situation. Id." *State v. Canty* (Aug. 22, 1990), 9th Dist. No. 90CA004775.

{¶33} In upholding the warrantless entry into the home based on the police officers' belief that a burglary was in progress in *Canty*, this Court further stated:

{¶34} "The protection of residents potentially inside the home was sufficient to justify the entry. See, e.g., *United States v. Estese* (C.A. 6, 1973), 479 F. 2d 1273; *United States v. Singer* (C.A. 8, 1982), 687 F. 2d

1135; *State v. Durbin* (July 11, 1988), Butler App. No. 87-12-167, unreported. The appellant's argument that the residence could have been secured and guarded while a warrant was obtained is not persuasive. The officers had reason to believe the house had been unlawfully entered prior to their arrival. Any number of crimes, possibly violent, could be occurring after the iilegal entry. The situation was of an emergency nature, and therefore, the officer's entry was justified." *Canty*, supra.

{¶35} In the instant case, the police officers testified that they were on routine patrol at around 10:30 p.m. They were patrolling the area of 1030 Kenmore Boulevard. This was a commercial district with vacant storefronts. As the officers were driving down the street, they observed a person dart across an open doorway in a vacant building. The officers approached the building to investigate and observed a man inside the building who appeared to be trying to conceal himself. The officers

drew their weapons and started banging on the door yelling for whomever was in the building to "open the door." Finally, appellant opened the door just far enough for him to come through, turned around, immediately slammed the key in the lock and locked the door. The officers then asked appellant if this was his business and he replied that it was not his business that he was only doing work there. After the officers told him that they would have to contact the owner of the business, he changed his story and said that he, in fact, did own the business. Then, when asked to present identification, appellant had a difficult time finding his identification and had a woman's identification in his wallet. The officers testified they still believed someone else was in the building because appellant was an older gentleman and moved slowly, whereas the figure they saw earlier in the building moved very quickly.

{¶36} Based on these facts, the trial court made a finding of fact that the police officers thought a burglary

was in progress. There was competent, credible evidence to support this finding. As such, exigent circumstances existed to enter the building. I would affirm.

APPEARANCES:

CHARLES R. QUINN, Attorney at Law, 88 South Portage Path, Suite 301, Akron, Ohio 44303, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, PHILIP D. BOGDANOFF, Assistant Prosecutung Attorney, Summit County Safety Building, 53 University Avenue, 6th Floor, Akron, Ohio 44308, for Appellee.

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE OF OHIO	)	CASE NO. CR 01 11 2927A
	)	
Plaintiff	)	JUDGE MURPHY
	)	
-vs-	)	
	)	
BOBBY D. JONES (A),	)	**JUDGMENT ORDER**
DAVID W. JONES (B),	)	
TERRY L. JONES (C),	)	
	)	
Defendants	)	

This cause came on before this Court on the 26th day of December, 2001 and the 8th day of January, 2002 upon the Motions to Suppress as filed by these three Defendants. Based upon the evidence presented at those hearings and the briefs of counsel, the Court makes the following findings:

(1) On the 4th day of November, 2001, Officers Lietke and Schwartz were on routine patrol in the Kenmore area and saw some suspicious activity at a building known as 1030 Kenmore Boulevard, Akron, Ohio at approximately 10:37 p.m. Officer Lietke saw a

figure of an individual dart across the front of the building, and when they stopped they observed through a window another individual (at least they thought) through the window.

The officers thought they may have a burglary in progress and they knocked on the door and asked the person to come out, which he did very surreptitiously, closing the door behind him so the officer s could neither get in nor see in. The said person was asked for identification and when asked, the person offered that his wallet contained someone else's ID, a female, and finally they determined they were dealing with one Bobby D. Jones.

Because of these suspicious activities, the officers indicated they were going to enter the building and check it. Upon entering they immediately saw some dried marijuana on the floor. Officer Schwartz entered another room of this building and found marijuana plants growing, along with lights and an irrigation system.

Bobby D. Jones indicated first to the officers that he was on foot, but then indicated a car was behind the building, at which time the officers called for backup. The found a brown briefcase to which he had referred, which the officers seized.

Other officers arrived at the scene and tagged the approximately 191 growing marijuana plants, along with the cultivation equipment. The briefcase was taken to the Police Department where an affidavit for search warrant was obtained and it was subsequently opened and found to contain approximately $43,000.00 of currency. Bobby D. Jones was then taken into custody and the matter referred to narcotics detectives.

(2) Detective Adam Wahl was then referred for investigation these matters. A certain information source indicated that there may have been marijuana sales out of the residence known at 567 Harvey Avenue. That was the same address given by Bobby D. Jones upon his entrance in the Summit County Jail. With the amount of

money being discovered in the briefcase, the growing marijuana, and the information regarding 567 Harvey Avenue, these officers received a search warrant for those premises for drugs, drug paraphernalia, and other related items (all of which are contained in Joint Exhibit 1, Affidavits and Search Warrants).

When the search warrant was issued for said premises the police found a male and a female present, Terry L. Jones and Nancy Jones. Much marijuana and paraphernalia were found at that address when the warrant was executed.

Upon execution, a neighbor indicated there was similar drug activity, short term visits by unknown persons, at the residence across the street known as 566 Harvey Avenue. The detective then consulted the criss-cross directory, showing that address as one for Bobby Jones. Subsequently another search warrant was obtained for that premises, searched, and much more marijuana and drug paraphernalia was recovered.

(3) The address known as 567 Harvey Avenue is owned by one David W. Jones.

CONCLUSIONS OF LAW

It is the conclusion of this Court that each search, albeit the one at 1030 Kenmore Boulevard, was made with probable cause. Because of the totality of the circumstances surrounding the officers' search at 1030 Kenmore Boulevard, this information led to more information regarding the purchase and sale of marijuana by Bobby D. Jones, and that the searches at 567 Harvey Avenue and 566 Harvey Avenue were made upon warrant, with probable cause to believe crimes were being committed therein.

Each step in the process of gathering evidence against these Defendants was dependent on evidence gathered at the next step, each time a warrant was obtained from a neutral Magistrate, before the police proceeded on the two residences, either owned by Bobby

D. Jones or David W. Jones. The Court does not believe that any "wrong residence" was searched.

There is no showing that these Defendants' rights were not protected by good and adequate police investigation, and their Motion to Suppress accordingly must be denied.

It is **ORDERED, ADJUDGED AND DECREED** that the Motion to Suppress the evidence gathered be and is hereby denied.

/s/ Judge James E. Murphy
JUDGE JAMES E. MURPHY

cc: Asst. Pros. John Mascolo
Attorney Lawrence J. Whitney
Attorney Charles R. Quinn
Attorney Karen R. Schneiderman

ctm
CR01-2927

CONSTITUTION OF THE UNITED STATES

AMENDMENT IV

Search and Seizure

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

R.C. § 2923.24

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XXIX. CRIMES--PROCEDURE

CHAPTER 2923. CONSPIRACY, ATTEMPT, AND COMPLICITY; WEAPONS CONTROL
WEAPONS CONTROL

Current through 2/15/03, including File 250 of the 124th GA (2001-2002), apv. 1/10/03

2923.24 POSSESSING CRIMINAL TOOLS

(A) No person shall possess or have under the person's control any substance, device, instrument, or article, with purpose to use it criminally.

(B) Each of the following constitutes prima-facie evidence of criminal purpose:

(1) Possession or control of any dangerous ordnance, or the materials or parts for making dangerous ordnance, in the absence of circumstances indicating the dangerous ordnance, materials, or parts are intended for legitimate use;

(2) Possession or control of any substance, device, instrument, or article designed or specially adapted for criminal use;

(3) Possession or control of any substance, device, instrument, or article commonly used for criminal purposes, under circumstances indicating the item is intended for criminal use.

(C) Whoever violates this section is guilty of possessing criminal tools. Except as otherwise provided in this division, possessing criminal tools is a misdemeanor of the first degree. If the circumstances indicate that the substance, device, instrument, or article involved in the offense was intended for use in the commission of a felony, possessing criminal tools is a felony of the fifth degree.

RELATED TERMS

CRIMINAL TOOLS; WEAPONS

CREDIT(S)

(1995 S 2, eff. 7-1-96; 1972 H 511, eff. 1-1-74)

R.C. § 2925.03

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XXIX. CRIMES--PROCEDURE

CHAPTER 2925. DRUG OFFENSES
DRUG OFFENSES

Current through 2/15/03, including File 250 of the 124th GA (2001-2002), apv. 1/10/03

2925.03 TRAFFICKING OFFENSES

Note: See also following version of this section, eff. 1-1-04

(A) No person shall knowingly do any of the following:

(1) Sell or offer to sell a controlled substance;

(2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person.

(B) This section does not apply to any of the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4723., 4729., 4731., and 4741. of the Revised Code;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States food and drug administration;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act.

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or schedule II, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish, whoever violates division (A) of this section is guilty of aggravated trafficking in drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(1)(b), (c), (d), (e), or (f) of this section, aggravated trafficking in drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(1)(c), (d), (e), or (f) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a

juvenile, aggravated trafficking in drugs is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, aggravated trafficking in drugs is a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, aggravated trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(e) If the amount of the drug involved equals or exceeds fifty times the bulk amount but is less than one hundred times the bulk amount and regardless of whether the offense was committed in the vicinity of a school or in

the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds one hundred times the bulk amount and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(2) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule III, IV, or V, whoever violates division (A) of this section is guilty of trafficking in drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(2)(b), (c), (d), or (e) of this section, trafficking in drugs is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(2)(c), (d), or (e) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, trafficking in drugs is a felony of the fourth degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, trafficking in drugs is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the second degree, and there is a presumption for a prison term for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty times the bulk amount, trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds fifty times the bulk amount and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of trafficking in marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(3)(b), (c), (d), (e), (f), or (g) of this section, trafficking in marihuana is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(3)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred grams but is less than one thousand grams, trafficking in marihuana is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one thousand grams but is less than five thousand grams, trafficking in marihuana is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five thousand grams but is less than twenty thousand grams, trafficking in marihuana is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds twenty thousand grams, trafficking in marihuana is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds twenty thousand grams and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the first degree, and the court shall impose as a mandatory prison term the

maximum prison term prescribed for a felony of the first degree.

(g) Except as otherwise provided in this division, if the offense involves a gift of twenty grams or less of marihuana, trafficking in marihuana is a minor misdemeanor upon a first offense and a misdemeanor of the third degree upon a subsequent offense. If the offense involves a gift of twenty grams or less of marihuana and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a misdemeanor of the third degree.

(4) If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A) of this section is guilty of trafficking in cocaine. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(4)(b), (c), (d), (e), (f), or (g) of this section, trafficking in cocaine is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(4)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five grams but is less than ten grams of cocaine that is not

crack cocaine or equals or exceeds one gram but is less than five grams of crack cocaine, trafficking in cocaine is a felony of the fourth degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within one of those ranges and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten grams but is less than one hundred grams of cocaine that is not crack cocaine or equals or exceeds five grams but is less than ten grams of crack cocaine, trafficking in cocaine is a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within one of those ranges and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one hundred grams but is less than five hundred grams of cocaine that is not crack cocaine or equals or exceeds ten grams but is less than twenty-five grams of crack cocaine, trafficking in cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within one of those ranges and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, and

the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds five hundred grams but is less than one thousand grams of cocaine that is not crack cocaine or equals or exceeds twenty-five grams but is less than one hundred grams of crack cocaine and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds one thousand grams of cocaine that is not crack cocaine or equals or exceeds one hundred grams of crack cocaine and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(5) If the drug involved in the violation is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., whoever violates division (A) of this section is guilty of trafficking in L.S.D. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(5)(b), (c), (d), (e), (f), or (g) of this section, trafficking in L.S.D. is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in

determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(5)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses of L.S.D. in a solid form or equals or exceeds one gram but is less than five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the fourth degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty unit doses but is less than two hundred fifty unit doses of L.S.D. in a solid form or equals or exceeds five grams but is less than twenty-five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D.

is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred fifty unit doses but is less than one thousand unit doses of L.S.D. in a solid form or equals or exceeds twenty-five grams but is less than one hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds one thousand unit doses but is less than five thousand unit doses of L.S.D. in a solid form or equals or exceeds one hundred grams but is less than five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds five thousand unit doses of L.S.D. in a solid form or equals or exceeds five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form and regardless of whether the offense was committed in

the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(6) If the drug involved in the violation is heroin or a compound, mixture, preparation, or substance containing heroin, whoever violates division (A) of this section is guilty of trafficking in heroin. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(6)(b), (c), (d), (e), (f), or (g) of this section, trafficking in heroin is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(6)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses or equals or exceeds one gram but is less than five grams, trafficking in heroin is a felony of the fourth degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the

offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty unit doses but is less than one hundred unit doses or equals or exceeds five grams but is less than ten grams, trafficking in heroin is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the second degree, and there is a presumption for a prison term for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one hundred unit doses but is less than five hundred unit doses or equals or exceeds ten grams but is less than fifty grams, trafficking in heroin is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds five hundred unit doses but is less than two thousand five hundred unit doses or equals or exceeds fifty grams but is less than two hundred fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile,

trafficking in heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds two thousand five hundred unit doses or equals or exceeds two hundred fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(7) If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates division (A) of this section is guilty of trafficking in hashish. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(7)(b), (c), (d), (e), or (f) of this section, trafficking in hashish is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(7)(c), (d), (e), or (f) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten grams but is less than fifty grams of hashish in a solid form or equals or exceeds two grams but is less than ten grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty grams but is less than two hundred fifty grams of hashish in a solid form or equals or exceeds ten grams but is less than fifty grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred fifty grams but is less than one thousand grams of hashish in a solid form or equals or exceeds fifty grams but is less than two hundred grams of hashish in a liquid

concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one thousand grams of hashish in a solid form or equals or exceeds two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(D) In addition to any prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code, and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) If the violation of division (A) of this section is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent. Except as otherwise provided in division (H)(1) of this section, a mandatory fine or any other fine imposed for a violation of this section is subject to division (F) of this section. If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk of the court shall pay the forfeited bail pursuant to divisions (D)(1) and (F) of this section, as if the forfeited bail was a fine imposed for a violation of this section. If any amount of the forfeited bail remains after that payment and if a fine is imposed under division (H)(1) of this section, the clerk of the court shall pay the remaining amount of the forfeited bail pursuant to divisions (H)(2) and (3) of this section, as if that remaining amount was a fine imposed under division (H)(1) of this section.

(2) The court shall revoke or suspend the driver's or commercial driver's license or permit of the offender in accordance with division (G) of this section.

(3) If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, the court forthwith shall comply with section 2925.38 of the Revised Code.

(E) When a person is charged with the sale of or offer to sell a bulk amount or a multiple of a bulk amount of a controlled substance, the jury, or the court trying the accused, shall determine the amount of the controlled

substance involved at the time of the offense and, if a guilty verdict is returned, shall return the findings as part of the verdict. In any such case, it is unnecessary to find and return the exact amount of the controlled substance involved, and it is sufficient if the finding and return is to the effect that the amount of the controlled substance involved is the requisite amount, or that the amount of the controlled substance involved is less than the requisite amount.

(F)(1) Notwithstanding any contrary provision of section 3719.21 of the Revised Code and except as provided in division (H) of this section, the clerk of the court shall pay any mandatory fine imposed pursuant to division (D)(1) of this section and any fine other than a mandatory fine that is imposed for a violation of this section pursuant to division (A) or (B)(5) of section 2929.18 of the Revised Code to the county, township, municipal corporation, park district, as created pursuant to section 511.18 or 1545.04 of the Revised Code, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender. However, the clerk shall not pay a mandatory fine so imposed to a law enforcement agency unless the agency has adopted a written internal control policy under division (F)(2) of this section that addresses the use of the fine moneys that it receives. Each agency shall use the mandatory fines so paid to subsidize the agency's law enforcement efforts that pertain to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (F)(2) of this section.

(2)(a) Prior to receiving any fine moneys under division (F)(1) of this section or division (B)(5) of section 2925.42 of the Revised Code, a law enforcement agency shall adopt a written internal control policy that addresses

the agency's use and disposition of all fine moneys so received and that provides for the keeping of detailed financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. All financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure by an agency are public records open for inspection under section 149.43 of the Revised Code. Additionally, a written internal control policy adopted under this division is such a public record, and the agency that adopted it shall comply with it.

(b) Each law enforcement agency that receives in any calendar year any fine moneys under division (F)(1) of this section or division (B)(5) of section 2925.42 of the Revised Code shall prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by the agency pursuant to division (F)(2)(a) of this section for that calendar year, and shall send a copy of the cumulative report, no later than the first day of March in the calendar year following the calendar year covered by the report, to the attorney general. Each report received by the attorney general is a public record open for inspection under section 149.43 of the Revised Code. Not later than the fifteenth day of April in the calendar year in which the reports are received, the attorney general shall send to the president of the senate and the speaker of the house of representatives a written notification that does all of the following:

(i) Indicates that the attorney general has received from law enforcement agencies reports of the type described in this division that cover the previous calendar year and indicates that the reports were received under this division;

(ii) Indicates that the reports are open for inspection under section 149.43 of the Revised Code;

(iii) Indicates that the attorney general will provide a copy of any or all of the reports to the president of the senate or the speaker of the house of representatives upon request.

(3) As used in division (F) of this section:

(a) "Law enforcement agencies" includes, but is not limited to, the state board of pharmacy and the office of a prosecutor.

(b) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(G) When required under division (D)(2) of this section, the court either shall revoke or, if it does not revoke, shall suspend for not less than six months or more than five years, the driver's or commercial driver's license or permit of any person who is convicted of or pleads guilty to a violation of this section that is a felony of the first degree and shall suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any person who is convicted of or pleads guilty to any other violation of this section. If an offender's driver's or commercial driver's license or permit is revoked pursuant to this division, the offender, at any time after the expiration of two years from the day on which the offender's sentence was imposed or from the

day on which the offender finally was released from a prison term under the sentence, whichever is later, may file a motion with the sentencing court requesting termination of the revocation; upon the filing of such a motion and the court's finding of good cause for the termination, the court may terminate the revocation.

(H)(1) In addition to any prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code, in addition to any other penalty or sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, and in addition to the forfeiture of property in connection with the offense as prescribed in sections 2925.42 to 2925.45 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section may impose upon the offender an additional fine specified for the offense in division (B)(4) of section 2929.18 of the Revised Code. A fine imposed under division (H)(1) of this section is not subject to division (F) of this section and shall be used solely for the support of one or more eligible alcohol and drug addiction programs in accordance with divisions (H)(2) and (3) of this section.

(2) The court that imposes a fine under division (H)(1) of this section shall specify in the judgment that imposes the fine one or more eligible alcohol and drug addiction programs for the support of which the fine money is to be used. No alcohol and drug addiction program shall receive or use money paid or collected in satisfaction of a fine imposed under division (H)(1) of this section unless the program is specified in the judgment that imposes the fine. No alcohol and drug addiction program shall be specified in the judgment unless the program is an eligible alcohol and drug addiction program and, except as otherwise provided in division (H)(2) of

this section, unless the program is located in the county in which the court that imposes the fine is located or in a county that is immediately contiguous to the county in which that court is located. If no eligible alcohol and drug addiction program is located in any of those counties, the judgment may specify an eligible alcohol and drug addiction program that is located anywhere within this state.

(3) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay any fine imposed under division (H)(1) of this section to the eligible alcohol and drug addiction program specified pursuant to division (H)(2) of this section in the judgment. The eligible alcohol and drug addiction program that receives the fine moneys shall use the moneys only for the alcohol and drug addiction services identified in the application for certification under section 3793.06 of the Revised Code or in the application for a license under section 3793.11 of the Revised Code filed with the department of alcohol and drug addiction services by the alcohol and drug addiction program specified in the judgment.

(4) Each alcohol and drug addiction program that receives in a calendar year any fine moneys under division (H)(3) of this section shall file an annual report covering that calendar year with the court of common pleas and the board of county commissioners of the county in which the program is located, with the court of common pleas and the board of county commissioners of each county from which the program received the moneys if that county is different from the county in which the program is located, and with the attorney general. The alcohol and drug addiction program shall file the report no later than the first day of March in the calendar year following the calendar year in which the program

received the fine moneys. The report shall include statistics on the number of persons served by the alcohol and drug addiction program, identify the types of alcohol and drug addiction services provided to those persons, and include a specific accounting of the purposes for which the fine moneys received were used. No information contained in the report shall identify, or enable a person to determine the identity of, any person served by the alcohol and drug addiction program. Each report received by a court of common pleas, a board of county commissioners, or the attorney general is a public record open for inspection under section 149.43 of the Revised Code.

(5) As used in divisions (H)(1) to (5) of this section:

(a) "Alcohol and drug addiction program" and "alcohol and drug addiction services" have the same meanings as in section 3793.01 of the Revised Code.

(b) "Eligible alcohol and drug addiction program" means an alcohol and drug addiction program that is certified under section 3793.06 of the Revised Code or licensed under section 3793.11 of the Revised Code by the department of alcohol and drug addiction services.

RELATED TERMS

ALCOHOLISM TREATMENT FACILITIES; ANABOLIC STEROIDS; BAIL; COCAINE; CONTROLLED SUBSTANCES; DEFENSES; DENTISTS AND DENTISTRY; DRUG OFFENSES; DRUG TRAFFICKING; DRUG TREATMENT PROGRAMS; FINES AND FORFEITURES; HASHISH; HEROIN; LIVESTOCK; LSD; MARIHUANA; MINORS; NURSES AND NURSING; PHARMACISTS

AND PHARMACIES; PHYSICIANS; RECORDS AND REPORTS; RESEARCH AND DEVELOPMENT; SCHOOLS AND SCHOOL DISTRICTS; SENTENCES; VERDICTS; VETERINARIANS

CREDIT(S)

(2000 H 528, eff. 2-13-01; 2000 H 241, eff. 5-17-00; 1999 S 107, eff. 3-23-00; 1998 S 66, eff. 7-22-98; 1998 S 164, eff. 1-15-98; 1996 S 166, eff. 10-17-96; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96; 1994 H 391, eff. 7-21-94; 1993 H 377, eff. 9-30-93; 1992 H 591, S 174; 1991 H 62; 1990 S 258, H 266, H 261, H 215; 1986 S 67; 1975 H 300)

R.C. § 2925.04

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XXIX. CRIMES--PROCEDURE

CHAPTER 2925. DRUG OFFENSES
DRUG OFFENSES

Current through 2/15/03, including File 250 of the 124th GA (2001-2002), apv. 1/10/03

2925.04 ILLEGAL MANUFACTURE OF DRUGS OR CULTIVATION OF MARIHUANA

Note: See also following version of this section, eff. 1-1-04

(A) No person shall knowingly cultivate marihuana or knowingly manufacture or otherwise engage in any part of the production of a controlled substance.

(B) This section does not apply to any person listed in division (B)(1), (2), or (3) of section 2925.03 of the Revised Code to the extent and under the circumstances described in those divisions.

(C)(1) Whoever commits a violation of division (A) of this section that involves any drug other than marihuana is guilty of illegal manufacture of drugs, and whoever commits a violation of division (A) of this section that involves marihuana is guilty of illegal cultivation of marihuana.

(2) Except as otherwise provided in this division, if the drug involved in the violation of division (A) of this section is any compound, mixture, preparation, or

substance included in schedule I or II, with the exception of marihuana, illegal manufacture of drugs is a felony of the second degree, and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the drug involved in the violation is methamphetamine, any salt, isomer, or salt of an isomer of methamphetamine, or any compound, mixture, preparation, or substance containing methamphetamine or any salt, isomer, or salt of an isomer of methamphetamine and if the offense was committed in the vicinity of a juvenile, in the vicinity of a school, or on public premises, illegal manufacture of drugs is a felony of the first degree, and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(3) If the drug involved in the violation of division (A) of this section is any compound, mixture, preparation, or substance included in schedule III, IV, or V, illegal manufacture of drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(4) If the drug involved in the violation is marihuana, the penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(4)(b), (c), (d), (e), or (f) of this section, illegal cultivation of marihuana is a minor misdemeanor.

(b) If the amount of marihuana involved equals or exceeds one hundred grams but is less than two hundred grams, illegal cultivation of marihuana is a misdemeanor of the fourth degree.

(c) If the amount of marihuana involved equals or exceeds two hundred grams but is less than one thousand grams, illegal cultivation of marihuana is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) If the amount of marihuana involved equals or exceeds one thousand grams but is less than five thousand grams, illegal cultivation of marihuana is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(e) If the amount of marihuana involved equals or exceeds five thousand grams but is less than twenty thousand grams, illegal cultivation of marihuana is a felony of the third degree, and there is a presumption for a prison term for the offense.

(f) If the amount of marihuana involved equals or exceeds twenty thousand grams, illegal cultivation of marihuana is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree.

(D) In addition to any prison term authorized or required by division (C) or (E) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) If the violation of division (A) of this section is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent. The clerk of the court shall pay a mandatory fine or other fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code. If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk shall pay the forfeited bail as if the forfeited bail were a fine imposed for a violation of this section.

(2) The court shall revoke or suspend the offender's driver's or commercial driver's license or permit in accordance with division (G) of section 2925.03 of the Revised Code. If an offender's driver's or commercial driver's license or permit is revoked in accordance with that division, the offender may request termination of, and the court may terminate, the revocation in accordance with that division.

(3) If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, the court shall comply with section 2925.38 of the Revised Code.

(E) Notwithstanding the prison term otherwise authorized or required for the offense under division (C) of this section and sections 2929.13 and 2929.14 of the

Revised Code, if the violation of division (A) of this section involves the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and if the court imposing sentence upon the offender finds that the offender as a result of the violation is a major drug offender and is guilty of a specification of the type described in section 2941.1410 of the Revised Code, the court, in lieu of the prison term otherwise authorized or required, shall impose upon the offender the mandatory prison term specified in division (D)(3)(a) of section 2929.14 of the Revised Code and may impose an additional prison term under division (D)(3)(b) of that section.

(F) It is an affirmative defense, as provided in section 2901.05 of the Revised Code, to a charge under this section for a fifth degree felony violation of illegal cultivation of marihuana that the marihuana that gave rise to the charge is in an amount, is in a form, is prepared, compounded, or mixed with substances that are not controlled substances in a manner, or is possessed or cultivated under any other circumstances that indicate that the marihuana was solely for personal use.

Notwithstanding any contrary provision of division (F) of this section, if, in accordance with section 2901.05 of the Revised Code, a person who is charged with a violation of illegal cultivation of marihuana that is a felony of the fifth degree sustains the burden of going forward with evidence of and establishes by a preponderance of the evidence the affirmative defense described in this division, the person may be prosecuted for and may be convicted of or plead guilty to a misdemeanor violation of illegal cultivation of marihuana.

(G) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal

record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in an application for employment, a license, or any other right or privilege or made in connection with the person's appearance as a witness.

RELATED TERMS

BAIL; CONTROLLED SUBSTANCES; DENTISTS AND DENTISTRY; DRUG OFFENSES; MARIHUANA; METHAMPHETAMINES; NURSES AND NURSING; PHARMACISTS AND PHARMACIES; PHYSICIANS; SENTENCES; VETERINARIANS

CREDIT(S)

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R.C. § 2925.11

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XXIX. CRIMES--PROCEDURE

CHAPTER 2925. DRUG OFFENSES
DRUG OFFENSES

Current through 2/15/03, including File 250 of the 124th GA (2001-2002), apv. 1/10/03

2925.11 DRUG POSSESSION OFFENSES

Note: See also following version of this section, eff. 1-1-04

(A) No person shall knowingly obtain, possess, or use a controlled substance.

(B) This section does not apply to any of the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with Chapters 3719., 4715., 4723., 4729., 4731., and 4741. of the Revised Code;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States food and drug administration;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other

nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act;

(4) Any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) If the drug involved in the violation is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish, whoever violates division (A) of this section is guilty of aggravated possession of drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(1)(b), (c), (d), or (e) of this section, aggravated possession of drugs is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, aggravated possession of drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(c) If the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, aggravated possession of drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(d) If the amount of the drug involved equals or exceeds fifty times the bulk amount but is less than one hundred times the bulk amount, aggravated possession of drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(e) If the amount of the drug involved equals or exceeds one hundred times the bulk amount, aggravated possession of drugs is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(2) If the drug involved in the violation is a compound, mixture, preparation, or substance included in schedule III, IV, or V, whoever violates division (A) of this section is guilty of possession of drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(2)(b), (c), or (d) of this section, possession of drugs is a misdemeanor of the third degree or, if the offender previously has been convicted of a drug abuse offense, a misdemeanor of the second degree. If the drug involved in the violation is an anabolic steroid included in schedule III and if the offense is a misdemeanor of the third degree

under this division, in lieu of sentencing the offender to a term of imprisonment in a detention facility, the court may place the offender on conditional probation pursuant to division (F) of section 2951.02 of the Revised Code.

(b) If the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, possession of drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) If the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, possession of drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of the drug involved equals or exceeds fifty times the bulk amount, possession of drugs is a felony of the second degree, and the court shall impose upon the offender as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of possession of marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(3)(b), (c), (d), (e), or (f) of this section, possession of marihuana is a minor misdemeanor.

(b) If the amount of the drug involved equals or exceeds one hundred grams but is less than two hundred grams, possession of marihuana is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved equals or exceeds two hundred grams but is less than one thousand grams, possession of marihuana is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) If the amount of the drug involved equals or exceeds one thousand grams but is less than five thousand grams, possession of marihuana is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(e) If the amount of the drug involved equals or exceeds five thousand grams but is less than twenty thousand grams, possession of marihuana is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) If the amount of the drug involved equals or exceeds twenty thousand grams, possession of marihuana is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree.

(4) If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A) of this section is guilty of possession of cocaine. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(4)(b), (c), (d), (e), or (f) of this section, possession of cocaine is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the amount of the drug involved equals or exceeds five grams but is less than twenty-five grams of cocaine that is not crack cocaine or equals or exceeds one gram but is less than five grams of crack cocaine, possession of cocaine is a felony of the fourth degree, and there is a presumption for a prison term for the offense.

(c) If the amount of the drug involved equals or exceeds twenty-five grams but is less than one hundred grams of cocaine that is not crack cocaine or equals or exceeds five grams but is less than ten grams of crack cocaine, possession of cocaine is a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree.

(d) If the amount of the drug involved equals or exceeds one hundred grams but is less than five hundred grams of cocaine that is not crack cocaine or equals or exceeds ten grams but is less than twenty-five grams of crack cocaine, possession of cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of the drug involved equals or exceeds five hundred grams but is less than one thousand grams of cocaine that is not crack cocaine or equals or exceeds twenty-five grams but is less than one hundred grams of crack cocaine, possession of cocaine is a felony

of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds one thousand grams of cocaine that is not crack cocaine or equals or exceeds one hundred grams of crack cocaine, possession of cocaine is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(5) If the drug involved in the violation is L.S.D., whoever violates division (A) of this section is guilty of possession of L.S.D. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(5)(b), (c), (d), (e), or (f) of this section, possession of L.S.D. is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the amount of L.S.D. involved equals or exceeds ten unit doses but is less than fifty unit doses of L.S.D. in a solid form or equals or exceeds one gram but is less than five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) If the amount of L.S.D. involved equals or exceeds fifty unit doses, but is less than two hundred fifty unit doses of L.S.D. in a solid form or equals or exceeds five grams but is less than twenty-five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of L.S.D. involved equals or exceeds two hundred fifty unit doses but is less than one thousand unit doses of L.S.D. in a solid form or equals or exceeds twenty-five grams but is less than one hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of L.S.D. involved equals or exceeds one thousand unit doses but is less than five thousand unit doses of L.S.D. in a solid form or equals or exceeds one hundred grams but is less than five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of L.S.D. involved equals or exceeds five thousand unit doses of L.S.D. in a solid form or equals or exceeds five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may

impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(6) If the drug involved in the violation is heroin or a compound, mixture, preparation, or substance containing heroin, whoever violates division (A) of this section is guilty of possession of heroin. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(6)(b), (c), (d), (e), or (f) of this section, possession of heroin is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses or equals or exceeds one gram but is less than five grams, possession of heroin is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) If the amount of the drug involved equals or exceeds fifty unit doses but is less than one hundred unit doses or equals or exceeds five grams but is less than ten grams, possession of heroin is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of the drug involved equals or exceeds one hundred unit doses but is less than five hundred unit doses or equals or exceeds ten grams but is less than fifty grams, possession of heroin is a felony of the second degree, and the court shall impose as a

mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of the drug involved equals or exceeds five hundred unit doses but is less than two thousand five hundred unit doses or equals or exceeds fifty grams but is less than two hundred fifty grams, possession of heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds two thousand five hundred unit doses or equals or exceeds two hundred fifty grams, possession of heroin is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(7) If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates division (A) of this section is guilty of possession of hashish. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(7)(b), (c), (d), (e), or (f) of this section, possession of hashish is a minor misdemeanor.

(b) If the amount of the drug involved equals or exceeds five grams but is less than ten grams of hashish in a solid form or equals or exceeds one gram but is less than two grams of hashish in a liquid concentrate, liquid

extract, or liquid distillate form, possession of hashish is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved equals or exceeds ten grams but is less than fifty grams of hashish in a solid form or equals or exceeds two grams but is less than ten grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) If the amount of the drug involved equals or exceeds fifty grams but is less than two hundred fifty grams of hashish in a solid form or equals or exceeds ten grams but is less than fifty grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(e) If the amount of the drug involved equals or exceeds two hundred fifty grams but is less than one thousand grams of hashish in a solid form or equals or exceeds fifty grams but is less than two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) If the amount of the drug involved equals or exceeds one thousand grams of hashish in a solid form or equals or exceeds two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the second degree, and the court shall impose as a mandatory prison term the

maximum prison term prescribed for a felony of the second degree.

(D) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(E) In addition to any prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction that is imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1)(a) If the violation is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent.

(b) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay a mandatory fine or other fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives

the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.

(c) If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk shall pay the forfeited bail pursuant to division (E)(1)(b) of this section as if it were a mandatory fine imposed under division (E)(1)(a) of this section.

(2) The court shall suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any person who is convicted of or has pleaded guilty to a violation of this section.

(3) If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, in addition to any other sanction imposed for a violation of this section, the court forthwith shall comply with section 2925.38 of the Revised Code.

(F) It is an affirmative defense, as provided in section 2901.05 of the Revised Code, to a charge of a fourth degree felony violation under this section that the controlled substance that gave rise to the charge is in an amount, is in a form, is prepared, compounded, or mixed with substances that are not controlled substances in a manner, or is possessed under any other circumstances, that indicate that the substance was possessed solely for personal use. Notwithstanding any contrary provision of this section, if, in accordance with section 2901.05 of the Revised Code, an accused who is charged with a fourth degree felony violation of division (C)(2), (4), (5), or (6) of this section sustains the burden of going forward with evidence of and establishes by a preponderance of the

evidence the affirmative defense described in this division, the accused may be prosecuted for and may plead guilty to or be convicted of a misdemeanor violation of division (C)(2) of this section or a fifth degree felony violation of division (C)(4), (5), or (6) of this section respectively.

(G) When a person is charged with possessing a bulk amount or multiple of a bulk amount, division (E) of section 2925.03 of the Revised Code applies regarding the determination of the amount of the controlled substance involved at the time of the offense.

RELATED TERMS

AFFIRMATIVE DEFENSES; ANABOLIC STEROIDS; BAIL; COCAINE; CONTROLLED SUBSTANCES; CRIMINALS; DEFENSES; DENTISTS AND DENTISTRY; DRUG OFFENSES; DRUG POSSESSION; FINES AND FORFEITURES; HASHISH; HEROIN; LIVESTOCK; LSD; MARIHUANA; NURSES AND NURSING; PHARMACISTS AND PHARMACIES; PHYSICIANS; PROBATION; RESEARCH AND DEVELOPMENT; SENTENCES; VERDICTS; VETERINARIANS

CREDIT(S)

(2000 H 241, eff. 5-17-00; 1999 S 107, eff. 3-23-00; 1998 S 66, eff. 7-22-98; 1997 S 2, eff. 6-20-97; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96; 1995 H 249, eff. 7-17-95; 1994 H 391, eff. 7-21-94; 1993 H 377, eff. 9-30-93; 1991 H 298, H 62; 1990 S 258; 1980 S 184, § 5)

28 UNITED STATES CODE SECTION 1257

§1257. State courts; appeal; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 929; July 29, 1970, Pub.L. 91-358, Title I, §172(a)(1), 84 Stat. 590; June 27, 1988, Pub.L. 100-352, §3, 102 Stat.662)